

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YOVANNY DOMINGUEZ,

Plaintiff,

-v-

OLD NAVY, INC.

Defendant.

19 Civ. 10165 (PAE) (SLC)

ORDER

PAUL A. ENGELMAYER, District Judge:

On February 20, 2020, defendant Old Navy moved to dismiss plaintiff Yovanny Dominguez's initial complaint in this case. Dkt. 13. On January 28, 2020, the Court referred the motion to the Honorable Sarah L. Cave, United States Magistrate Judge, for a report and recommendation. Dkt. 15. On February 11, 2020, Dominguez filed an amended complaint. Dkt. 16. On March 20, 2020, Judge Cave stayed the case in light of similar pending cases in this District and the Eastern District of New York. Dkt. 26. That stay expired on August 4, 2020. *Id.* On August 7, 2020, the Court administratively terminated Old Navy's motion dismiss, without prejudice to its ability to refile its motion, on the ground that motions raising identical arguments were then-pending on appeal before the Second Circuit. Dkt. 33. The Court also stayed all proceedings in the case pending a decision from the Second Circuit. *Id.*

On June 7, 2022, the parties filed a joint letter alerting the Court that the Second Circuit has issued a decision in *Calcano, et al. v. Swarovski North America Ltd., et al.*, No. 20-1552. Dkt. 35. In light of the decision, plaintiff seeks leave to file an Amended Complaint, which the defendant opposes on the ground that it would be futile in light of *Calcano*, and in the alternative to renew its motion to dismiss. *Id.*

The Court grants plaintiff's request to file an Amended Complaint, which shall be filed by July 13, 2022. If plaintiff does amend, by August 3, 2022, defendant shall: (1) file an answer; (2) file a new motion to dismiss; or (3) submit a letter to the Court, copying plaintiff, stating that it relies on the previously filed motion to dismiss.¹

It is further ORDERED that if no amended complaint is filed, plaintiff shall serve any opposition to the motion to dismiss by July 13, 2022. Defendant's reply, if any, shall be served by July 27, 2022.

The Court will determine later, after receipt of plaintiff's anticipated brief opposing a motion to dismiss the current or amended complaint, whether to schedule oral argument.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: June 13, 2022
New York, New York

¹ If defendant files a new motion to dismiss or relies on their previous motion, plaintiff's opposition will be due 14 days thereafter, and defendant's reply, if any, will be due seven days after that.